SUPREME COURT OF MICHIGAN

In the Matter of the Estate of Mansfield L. Spears, Deceased,

No. 43,566

EVA MAE SPEARS,

Proponent,

vs.

WILLIAM TALMADGE SPEARS, ET AL.,

Contestants-Appellants.

JURISDICTIONAL STATEMENT

This cause grows out of a will contest. Mansfield L. Spears, deceased, died at Oakland County, Michigan, on the 16th day of September, 1945, and left him surviving a widow, a son, and brothers and sisters, nephews and nieces, several wills, and an estate of the value of approximately $50,000.00.

Eva Mae Spears offered one of these wills for probate; contest was filed by the son, brothers and sisters, nephews and nieces; contest was tried in the Circuit Court of Oakland County, Michigan and decision rendered adverse to contestants; contestants appealed to the Supreme Court of Michigan; there is a large record in this case, and takes a long time to complete same for the Supreme Court of Michigan; and although the case is in the Supreme Court of Michigan, the record has not been completed as yet, and without fault or delay on the part of contestants; the Supreme Court of Michigan, on the 8th day of October 1946 made an extension of 90 days in which to complete the record on appeal; but because of the great amount of work, prior to the expiration of said 90 days, I. H. Spears filed with the

Supreme Court of Michigan petition and affidavit for an extension of time to make the record for the Supreme Court of Michigan and for substitution of I. H. Spears as Appellant by reason or assignment of interest by Contestants to himself.

The proponent resisted said application, and plead Michigan Annotated Statutes 27.87, 27.88, and 27.89, respectively; the court sustained the objection and denied extension of time and substitution of party: thereafter, assignee filed petition for rehearing of said petition for extension and substitution, in which he plead the invalidity of said order or judgment as being in violation of Art. 4, Sec. 2, United States Constitution; 14th Amendment Constitution, Sec. 1; United States Constitution, Art. 3, Sec. 2; Art. 5, Sec. 4 and 5; Act of Congress, 28 U. S. C. A. 41 (1); Federal Rules Civil Procedure, Rule 25 (c); Michigan Court Rule 49, and the State and Federal decisions in such cases made and provided.

The jurisdiction of the Supreme Court of the United States upon appeal is invoked under Section 237 Judicial Code, Amended, 28 U. S. C. A. Section 344 (b) and (c); Art. 3 Section 2, United States Constitution; Art. 4, Section 2, U. S. Constitution; 5th Amendment, 4th Clause, U. S. Constitution; 14th Amendment, Section 1 United States Constitution, and 28 U. S. C. A. 41 (1).

The Statutes of the State of Michigan, validity of which is involved in the court's decisions, in pertinent parts as follows:

> "27.87—No attorney or counselor shall, directly or indirectly, buy, or be in any manner interested in buying, any bond, promissory note, bill of exchange, book debt or other thing in action, with the intent and for the purpose of bringing any suit thereon."
>
> "27.88—Every attorney or counselor who shall violate the last preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be

punished by fine not exceeding one thousand ($1,000.00) dollars, or by imprisonment in the county jail not exceeding six (6) months, or both, in the discretion of the court; and he shall be removed from office in the several courts in which he is authorized to practice."

"27.92—If, on such examination, it shall appear that the cause of action on which such suit was founded has been brought or procured contrary to the true intent of the provisions of this chapter, the plaintiff in such action shall be nonsuited."

The assignee claims an absolute right to be substituted; and that said statutes are void and unconstitutional, and deny to this assignee the equal protection of the law; and deprive him of his property without due process of law; and deprive him of his rights, privileges, and immunities guaranteed to him under the United States Constitution; and interfere with assignee's right of contract in violation of the Federal Constitution and laws in such cases made and provided.

The appeal prayed for is to the Supreme Court of the United States from the final decrees or judgments denying assignee's petition for substitution, and extension, and denying assignee's petition for rehearing of petition for substitution and extension and is provided for by 28 U. S. C. A. Section 344 (Section 237 Judicial Code, Amended).

Application for appeal is made this 3rd day of April, A. D. 1947.

Cases believed to sustain jurisdiction of Supreme Court of the United States are:

Missouri v. *Dockery*, 24 S. Ct. 53; 191 U. S. 170; 48 L. Ed. 133;

Ex Parte Virginia, 100 U. S. 347; 25 L. Ed. 676;

Ho Ah Kow v. *Nunan*, 5 Sawyer U. S. 552; 12 Fed. Case No. 6,546;

Nashville R. Co. v. *Taylor*, 86 Fed. 168; 88 Fed. 350;

International Union of Mine, Mill and Smelter Workers v. *Tenn. Copper Co.*, 31 Fed. Supp. 1015;
Ladher v. *Siegel*, 148 A. 699;
Huntington v. *New York*, 118 Fed. 683; 193 U. S. 441; 48 L. Ed. 741;
Voigt v. *Webb*, 47 F. Supp. 743;
Chambers v. *Baltimore, etc. R. Co.*, 28 S. Ct. 34; 207 U. S. 142; 52 L. Ed. 143;
In re Anderson's Will, 281 N. Y. S. 831; 156 Misc. 286;
Betts v. *Brady*, 62 S. Ct. 1253; 316 U. S. 455; 86 L. Ed. —;
Miliniski v. *People of N. Y. State*, 65 S. Ct. 781; 89 L. Ed. —;
Manhattan L. Ins. Co. v. *Cohen*, 234 U. S. 123, 134; 58 L. Ed. 1245;
Henderson v. *U. S.*, 63 F. Supp. 906;
Queenside Hills Realty Co. v. *Sake*, 66 S. Ct. 850;
Christman v. *Russell*, 14 Wall. 69; 20 L. Ed. 762;
Kendall v. *U. S.*, 74 U. S. 113; 7 Wall. 113;
Walker v. *Brown*, 165 U. S. 654;
Smith v. *Indiana*, 191 U. S. 138; 48 L. Ed. 125;
Demorest v. *City Bank etc.*, 321 U. S. 36; 88 L. Ed. 526;
Snowden v. *Hughes*, 321 U. S. 1; 88 L. Ed. 497.

Federal Rules of Civil Procedure, Rule 25 (c) following 28 U. S. C. A. 723c.

Respectfully submitted,

I. H. Spears, *Pro Se.*,
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Of Counsel.

"At a session of the Supreme Court of the State of Michigan, held in the Supreme Court Room, in the Capitol, in the City of Lansing, on the fourteenth day of January, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable Leland W. Carr, Chief Justice; Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil H. Reid, Walter H. North, John R. Dethmers, Associate Justices.

In the Matter of the estate of Mansfield L. Spears, deceased

43566

EVA MAE SPEARS,

Proponent,

vs.

WILLIAM TALMADGE SPEARS, et al.,

Contestants-Appellants

In this cause a motion is filed by I. H. Spears for an order substituting the said I. H. Spears as party defendant in the place and stead of William Talmadge Spears, Bettie Tunsell, King David, Rebecca Spears, Delia James, Mary David and Catherine Dubose, and for an extension of time within which to settle the case on appeal, and due consideration thereof having been had by the court, It is ordered that the motion be and the same is hereby denied."

ORDERS OF MARCH FOURTH, 1947

[Omitting Caption]

"In this cause a motion is filed by I. H. Spears for a reconsideration of the order heretofore entered herein on January 14th, 1947, denying the motion to extend the time within which to settle the bill of exceptions and for substitution and due consideration thereof having been had by the court, It is ordered that the orders heretofore entered herein on January 14, 1947, as aforesaid, stand affirmed."

"In this cause a motion is filed by proponent to dismiss appeal heretofore taken herein by contestants from the judgment of the Circuit Court for the County of Oakland, and a brief in opposition thereto having been filed by I. H. Spears, and due consideration thereof having been had by the court, It is ordered that the appeal taken herein as aforesaid be and the same is hereby dismissed."

[Clerk's certificate omitted.]

I. H. SPEARS.